

Date: November 19, 1998

Case No.: 1998-LHC-342

OWCP No.: 5-91567

In the Matter of:

CHRISTOPHER C. LYNCH,
Claimant,

v.

**NEWPORT NEWS SHIPBUILDING AND
DRY DOCK COMPANY,**
Self-Insured/Employer,

and

**DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,**
Party-in-Interest.

**DECISION AND ORDER GRANTING BENEFITS TO THE CLAIMANT AND
SECTION 8(f) RELIEF TO THE EMPLOYER**

This proceeding arises from a claim filed under the provision of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. 901 et seq.

A formal hearing was held in Newport News, Virginia on August 4, 1998. At that hearing, Employer's Counsel stated that Employer has accepted Claimant as being permanently and totally disabled. Thus, Claimant and Employer have settled the outstanding issues between them, and the single remaining issue is Employer's request for relief under Section 8(f) of the Act.

Stipulation of Facts

Employer and Claimant stipulated that:

1. The parties are subject to the jurisdiction of the Longshore and Harbor Workers' Compensation Act;
2. An Employer/Employee relationship existed between the parties at all relevant times;
3. On March 11, 1994, Claimant sustained an injury to his back that arose out of and in the course of his employment;
4. Claimant gave Employer timely notice of this injury and filed a timely claim for compensation;
5. Employer filed a timely First Report of Accident and a timely Notice of Controversion;
6. Claimant's average weekly wage at the time of the March 11, 1994 back injury was \$639.23, resulting in a compensation rate of \$426.15;
7. As a result of the injury, Claimant was temporarily and totally disabled from March 14, 1994 to August 14, 1994 inclusive, from August 19, 1994 to August 21, 1994 inclusive, from September 22, 1994 to October 3, 1994 inclusive, on November 8, 1994, on December 20, 1994, from January 10, 1995 to January 22, 1995 inclusive, from January 31, 1995 to February 1, 1995 inclusive, on February 20, 1995, on March 1, 1995, from March 8, 1995 to March 12, 1995 inclusive, from March 16, 1995 to March 20, 1995 inclusive, from March 31, 1995 to April 6, 1995 inclusive, on June 2, 1995, on June 16, 1995, from June 21, 1995 to June 24, 1995 inclusive, from July 10, 1995 to July 16, 1995 inclusive, from August 25, 1995 to August 27, 1995 inclusive, from September 14, 1995 to September 17, 1995 inclusive, from September 22, 1995 to September 24, 1995 inclusive, from October 23, 1995 to November 2, 1995 inclusive, from December 8, 1995 to December 12, 1995 inclusive, from January 22, 1996 to January 26, 1996 inclusive, on March 27, 1996, from May 22, 1996 to June 16, 1996 inclusive, from June 26, 1996 to July 7, 1996 inclusive, from July 16, 1996 to July 21, 1996 inclusive, from July 30, 1996 to July 31, 1996 inclusive and from September 12, 1996 to September 25, 1996 inclusive, entitling him to compensation for 44

2/7 weeks at \$426.15 per week, amounting to \$1,887.36;¹

8. As a result of the injury, Claimant was temporarily and partially disabled from August 15, 1994 to August 18, 1994 inclusive, during which time his earning capacity was reduced by \$52.66 per week, entitling him to compensation for 4/7 weeks at \$35.11 per week, amounting to \$20.01;
9. As a result of the injury, Claimant was temporarily and partially disabled from August 22, 1994 to August 28, 1994 inclusive, during which time his earning capacity was reduced by \$334.10 per week, entitling him to compensation for 1 week at \$222.73 per week, amounting to \$222.73;
10. As a result of the injury, Claimant was temporarily and partially disabled from August 29, 1994 to September 21, 1994 inclusive and from October 4, 1994 to October 7, 1994 inclusive, during which time his earning capacity was reduced by \$232.39 per week, entitling him to compensation for 4 weeks at \$154.93 per week, amounting to \$619.72;
11. As a result of the injury, Claimant was temporarily and partially disabled from November 9, 1994 to December 19, 1994 inclusive from January 3, 1995 to January 9, 1995 inclusive, from January 23, 1995 to January 30, 1995 inclusive, from February 2, 1995 to February 19, 1995 inclusive, from February 21, 1995 to February 28, 1995 inclusive, from March 2, 1995 to March 7, 1995 inclusive, from March 13, 1995 to March 15, 1995 inclusive, from March 21, 1995 to March 30, 1995 inclusive and from April 7, 1995 to May 23, 1995 inclusive, during which time his earning capacity was reduced by \$52.66 per week, entitling him to compensation for 21 1/7 weeks at \$35.11 per week, amounting to \$742.33;
12. As a result of the injury, Claimant was temporarily and partially disabled from May 24, 1995 to June 15, 1995 inclusive, from June 17, 1995 to June 20, 1995 inclusive, from June 25, 1995 to July 9, 1995 inclusive and from July 17, 1995 to August 24, 1995 inclusive, during which time his earning capacity was reduced by

¹ This amount was corrected to be \$18,873.60 pursuant to an inquiry by this office.

\$348.63 per week, entitling him to compensation for 11 4/7 weeks at \$232.42 per week, amounting to \$2,689.43;

13. As a result of the injury, Claimant was temporarily and partially disabled from August 28, 1995 to September 13, 1995 inclusive, from September 18, 1995 to September 22, 1995 inclusive, from September 25, 1995 to October 22, 1995 inclusive and from November 3, 1995 to December 7, 1995 inclusive, during which time his earning capacity was reduced by \$290.51 per week, entitling him to compensation for 12 1/7 weeks at \$193.67 per week, amounting to \$2,351.71;
14. As a result of the injury, Claimant was temporarily and partially disabled from December 10, 1995 to January 22, 1996 inclusive, from January 25, 1996 to March 26, 1996 inclusive, from March 28, 1996 to May 21, 1996 inclusive, from July 22, 1996 to July 29, 1996 inclusive, from August 1, 1996 to August 26, 1996 inclusive and from August 29, 1996 to September 11, 1996 inclusive, during which time his earning capacity was reduced by \$348.63 per week, entitling him to compensation for 29 6/7 weeks at \$232.42 per week, amounting to \$6,939.40;
15. Claimant reached maximum medical improvement from his March 11, 1994 back injury on September 26, 1996, when he was assigned permanent work restrictions;
16. As a result, at least in part, of his March 11, 1994 back injury, Claimant was permanently and totally disabled from September 26, 1996 to October 1, 1996 inclusive, from October 28, 1996 to October 30, 1996 inclusive, on November 19, 1996, from December 3, 1996 to December 4, 1996 inclusive, on December 16, 1996 and on March 6, 1997, entitling him to compensation for 1 6/7 weeks at \$426.15 per week, amounting to \$791.42;
17. As a result, at least in part, of the injury, Claimant was permanently and partially disabled from October 2, 1996 to October 27, 1996 inclusive, from October 31, 1996 to November 11, 1996 inclusive, from November 20, 1996 to December 2, 1996 inclusive, from December 5, 1996 to December 15, 1996 inclusive, from December 17, 1996 to March 5, 1997 inclusive and from March 7, 1997 to May 5, 1997 inclusive, during which time his earning capacity was reduced by \$348.63 per week, entitling him to compensation for 28 5/7 weeks at \$232.42 per week, amounting to \$6,673.77;

18. As a result, at least in part, of the injury, Claimant was and is permanently and totally disabled from May 6, 1997 and continuing, entitling him to compensation for 66 weeks as of August 10, 1998 at \$426.15 per week, amounting to \$28,125.90;
19. Claimant had a pre-existing condition of chronic back disability prior to his March 11, 1994 back injury;
20. Claimant's disability is not caused by his March 11, 1994 back injury alone. Indeed, his disability is materially contributed to and made materially and substantially worse by his pre-existing chronic back disability.

The undersigned does accept the stipulations which are stated above in view of the correction of stipulation number seven.

Section 8(f) Relief

In October 1998, Employer submitted exhibits which have been marked as EX 1-9.

On September 9, 1998, Counsel for the Director, OWCP, submitted a response which stated in part:

In the event the Administrative Law Judge . . . determines that there is a compensable permanent disability and the award of compensation is entered, which exceeds a nominal award, the Director agrees to payment by the Special Fund. . . . Payment is to commence 104 weeks from September 26, 1996, the date [Claimant] reached maximum medical improvement.

By the above action, the Director has conceded that the Employer is entitled to relief under Section 8(f) of the Act. Thus, all issues have been resolved by all parties.

ORDER

1. Claimant achieved maximum medical improvement as of September 26, 1996.
2. Pursuant to the stipulations between Employer and Claimant, from September 26, 1996 through May 5, 1997, Employer shall pay either permanent total disability or permanent partial disability as set forth above.

3. Claimant is entitled to permanent total disability benefits at the compensation rate of \$426.15 per week from May 6, 1997 and continuing.
4. Upon the expiration of 104 weeks after September 26, 1996, compensation shall be paid by the Special Fund established pursuant to the provisions of 33 U.S.C. §944.
5. The Employer shall receive credit for all compensation that has been paid.
6. Interest at the rate specified in 28 U.S.C. §1961 in effect when this Decision and Order is filed with the Office of the District Director shall be paid on all accrued benefits computed from the date each payment was originally due to be paid. See Grant v. Portland Stevedoring Co., 16 BRBS 267 (1984).
7. All computations are subject to verification by the District Director.
8. Claimant's attorney within 20 days of the receipt of this order, shall submit a fully supported fee application, a copy of which shall be sent to opposing counsel, who then shall have ten (10) days to respond with objections thereto.

RICHARD K. MALAMPHY
Administrative Law Judge

RKM/kal/ccb
Newport News, Virginia